



May 24, 2011

By electronic deliver to:

Regs.comments@federalreserve.gov

Jennifer L Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington DC 20551

Re: Docket No. R-1409
Availability of Funds and Collection of Checks

Dear Ms. Johnson:

Kohler Credit Union appreciates the opportunity to submit comments on the Federal Reserve's proposed rules amending Regulation CC (Availability of Funds and Collection of Checks) to implement certain amendments to the regulation made by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Kohler Credit Union is a \$250 million asset, member-owned, community chartered credit union, headquartered in Kohler, Wisconsin. Kohler Credit Union maintains six (6) full service branches and three (3) in-school branches serving approximately 33,000 customers (members) in Sheboygan, Calumet, Manitowoc, Ozaukee, Washington and Fond du Lac Counties of Wisconsin.

First, we would like to comment on the length of this proposal. We feel that 503 pages of proposed regulations are excessive and burdensome. Most compliance personnel will read the entire proposal because they want to get the regulation right and they are concerned they might miss something. However, with all of the regulatory changes coming down the road due to Dodd-Frank, the agencies need to do a better job in condensing their thoughts and/or issuing proposals to implement more than one section of the Dodd-Frank Act at a time. The time it takes compliance personnel to read, analyze and implement a regulation is growing.

While Kohler Credit Union does not have concerns with all areas of the proposal, the following are our comments on the proposal:

Next Day Availability. Dodd-Frank amends the regulation by increasing from \$100 to \$200 the amount of deposited funds that financial institutions must make available for withdrawal by opening of business on the next day. We would like to note that most returned checks received by the Credit Union are under this threshold and that this is the area where most losses are incurred by the financial institution.



Reasonable Hold Extension. Kohler Credit Union opposes this proposal because even with the current hold periods established, checks are not being returned in the allotted time frame to reverse credit before the hold is lifted. Kohler Credit Union processes checks via Check 21 and has not seen the timeframe for returned checks shortened. Those people who are out to defraud the Credit Union are aware of these holds and the cost of fraud to the Credit Union has been increasing.

As to ATM deposit holds, the deposits made at a proprietary ATM may be in the machine for up to 24 hours (if deposited immediately after the machine is serviced) and for non-proprietary machines, there is an additional day to route the deposits to the Credit Union. Thus, up to 48 hours may pass before the deposit reaches the Credit Union. Therefore, the Credit Union feels that nonproprietary ATMs should have a greater hold period. We feel that the hold times should remain as they are.

Hold Periods and Case-by-Case Check Holds. The Credit Union has a general practice of making check deposits immediately available for withdrawal. However, there are numerous reasons that a check presented for deposit may appear to have reasonable doubt of collectability. The purpose of holding items is to reduce the risk of an item not being collected from the depository institution. Therefore, case-by-case check holds are a necessity for the industry. It would be helpful to get more clarification on the “reasonable cause” holds. One such reason may be the inability to verify that a check is good by contacting the other financial institution that it is drawn on. Not everything that comes across the teller counter can fit nicely into a “box”. Therefore eliminating the checklist on model forms C-12 and C-13 would be beneficial.

The Credit Union does charge back a member’s account for any returned checks. In the present environment, items that are not returned electronically can take more than five (5) days to make it back to the bank of first deposit. Shortening the period of holds ignores the fact that not all financial institutions process electronically. The Board should use other means to work towards total electronic check processing instead of Regulation CC and delay the shortening of the hold periods until this is complete.

Some financials in the industry continue to apply such holds to mitigate potential risk of loss and though the Credit Union has a general next day availability policy, we continue to disclose the potential for case-by-case and exception holds. We are concerned that eliminating the possibility of case-by-case holds could have the undesired consequence of shifting to a policy of placing statutory limits on all deposits. Placing the burden of proof that a longer hold period is reasonable is not practical, and is very subjective and open for interpretation. The Credit Union requests more guidance in this area. The Credit Union does not agree with the Board that this is incentive to take advantage of electronic check-return infrastructures.



Here are four examples of where holds were and were not effective:

HOLD PERIODS PREVENTED A LOSS TO THE CREDIT UNION

DATE OF TRANSACTION	AMOUNT OF THE CHECK	TYPE OF HOLD	DATE KCU WAS NOTIFIED OF RETURN
1/22/11	\$4816.39	9 Day – Special hold	1/27/11
12/11/11	\$75,941.87	7 Day – Exception	12/17/11

HOLD PERIODS WOULD NOT HAVE PREVENTED A LOSS TO THE CREDIT UNION

DATE OF TRANSACTION	AMOUNT OF THE CHECK	TYPE OF HOLD	DATE KCU WAS NOTIFIED OF RETURN
12/4/10	\$5100.00	2 Day – Local	12/8/10
4/1/11	\$2500.00	2 Day – Local	4/6/11

The Credit Union does concur with the proposal to specify the business day on which funds will be available for deposit as that is less confusing to consumers than banking day.

New Account Holds. In times of fraud when many cashier’s checks and other items are fraudulent, the first \$5,000 next day availability is too high a standard.

Encouraging Electronic Returns. The faster return requirements proposed may assist in reversing funds that will not be honored by the paying bank, but on the other hand, will require the Credit Union to add staff to comply with the requirements of complying with this from our end. In the economic times that we are in, the Credit Union is running lean on personnel to contain costs, and this additional requirement would cost the Credit Union – and the members who own the Credit Union – money that is just not available. Our concerns are that the industry – particularly smaller institutions like ours – may not be able to shoulder the costs of new personnel and technology necessary to accomplish what is proposed. The UCC rules allowing a paying institution to return an unpaid check by midnight of the banking day following receipt is working and should be left as is.

The first alternative presented by the Board where a returning institution would be able to accept an electronic return from any returning institution appears to be cost prohibitive with the number of financial institutions in the country. The second alternative where an electronic return may be returned through the forward-collection chain would not go far enough in that returning a check to a branch where the deposit was presented would not be sufficient since all returned checks are processed at a central location at the Credit Union.



We also do not agree that providing a notice of exception via email is practical for the technology and personnel costs mentioned earlier.

Regulation CC should not be used as a means to encourage (or provide strong incentive) for electronic transmittal and collection of checks.

We do agree that a paying institution could require checks presented for same-day settlement be presented electronically as “electronic collection items” and that an electronically-created item comply with all the provision of Regulation CC.

Expeditious Return of Checks. We do not agree that a paying institution that relies on an extension to send a return to a returning institution should bear the risk that the returning institution may not return the check expeditiously. We do, however, agree that the extension should be modified so that the return must actually reach the depository institution within the two-day timeframe.

Reasons for Return. The proposal looks to delete or not permit certain activities as reasons for return. We believe that the Board should keep the provisions of “refer to maker” instruction and “notice in lieu of return”. We do agree with the proposal of a notice-of-nonpayment if a depository financial does not accept electronic return items.

The Credit Union would never have the information necessary for a notice-in-lieu of return if it does not have the check or an image of both sides of the check; we believe that a notice in lieu of return needs to include the check’s original MICR information.

The regulation should continue to allow an institution to prepare a check for automated return by placing the check in a carrier envelope. The regulation should also continue to provide a provision for qualifying paper returned checks by paying and returning institutions, due to the cost of implementing alternative methods.

We request further details about how a returning institution holds itself out as willing to accept electronic returns from a paying institution and how a paying institution would handle electronic returns when it is unable to identify the depository institution.

Warranties. The Credit Union concurs that remotely created check warranties should extend to the person on whose account the remotely created check is drawn. A financial institution receiving a warranty claim related to an electronic collection item, electronic return, or a nonconforming substitute check should be able to pass back its liability for the item to the financial from which it had received the electronically-created image and information.

Check Presentment. The Credit Union feels that paper checks presented for same-day settlement should be separated from other check presentments.



Model Forms. The Credit Union concurs that changing model notices from narrative to tabular will make them more easily understood. With that being said, however, some notices are created on core processing systems and some of these systems do not support tabular disclosures that reflect the look of the model forms.

The Credit Union does agree with the proposed language to the model availability disclosures that charge-back rights are maintained by the institution if checks are returned.

The Credit Union does not see a need to have model form C-1 to exist without the right to invoke the new account and other exceptions, concurs that C-8 is obsolete, and concurs with the elimination of C-6, C-7 and C-10 with appropriate language being incorporated into other notices.

The new model forms proposing to give availability schedules on "total deposit amount" become confusing to use when you have multiple items deposited. It seems that this was proposed before and eliminated because it created confusion.

Effective Dates. The proposed dates of 30 days (subparts A and B), 6 months (subparts C and D), and 12 months (subparts B and model forms in Appendix C) for compliance of do not seem reasonable. We would propose 90 days instead of the 30 days and 12 months for all other requirements.

Kohler Credit Union appreciates the opportunity to share our thoughts on the proposal. Again, we would urge the Board to reconsider the proposed changes as addressed above. If you have questions or need further information, please feel free to contact us by telephone 920-459-2595 or by email at cburton@kohlercu.com and svandermeuse@kohlercu.com.

Sincerely,

A handwritten signature in cursive script, reading 'Cheryl Burton'.

Cheryl Burton
Vice President of Member Operations

A handwritten signature in cursive script, reading 'Sue Vandermeuse'.

Sue Vandermeuse
Director of Risk Management